

Appl. No. 10/810,002
Amendment E dated January 15, 2009
Resp. to O.A. dated October 16, 2008

PATENT
Docket No. J-3949

Remarks

Claims 19-26, 28, 29, 43-46, and 48-53 are pending and at issue in the present application, claims 3, 5, 6, 17, 27, 30-35 and 40 having been withdrawn from consideration and claims 1, 2, 4, 7-16, 18, 36-39, 41, 42, and 47 having been canceled in a previously filed amendment. Claims 19, 43, and 51 have been amended herein. The amendments to claims 19, 43, and 51 do not introduce any new matter. Support for such amendments may be found at page 8, line 24 of the specification.

Applicants traverse the rejections of claims 19-26, 28, 29, 43-46, and 48-53 as anticipated by or obvious over Flock.

Amended claim 19, and claims 20-26, 28, and 29 dependent thereon, specify an actuator cap including a main wall that extends generally along an axial dimension thereof and has a varying cross-sectional size. A flexible actuator member extends transversely to the axial dimension and terminates at an outer peripheral surface, wherein the outer peripheral surface extends laterally beyond a portion of the main wall but does not extend beyond a greatest lateral extent of the main wall. An upright portion that has a curved outer surface is disposed adjacent the flexible actuator member. The curved outer surface is engageable with an internal surface of a housing to guide the flexible actuator member and prevent inadvertent actuation of the flexible actuator member. The housing is spaced outwardly from the main wall when the actuator cap is placed in the housing.

Amended claim 43, and claims 44-46 and 48-50 dependent thereon, recite an actuator cap including a main wall that extends generally along an axial dimension thereof and has a varying cross-sectional size. A flexible actuator member extends transversely to the axial dimension and terminates at an outer peripheral surface wherein the outer peripheral surface extends laterally beyond a portion of the main wall but does not extend beyond a greatest lateral extent of the main wall. An upright portion that has a curved outer surface is disposed adjacent the flexible actuator member, wherein the curved outer surface prevents inadvertent actuation of the flexible actuator member and the upright portion includes an arcuate gusset on an internal surface thereof.

Amended claims 51, and claims 52 and 53 dependent thereon, recite an actuator cap including a main wall that extends generally along an axial dimension thereof and has a varying cross sectional size. A flexible actuator member extends transversely to the axial dimension and terminates at an outer peripheral surface wherein the outer peripheral surface

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extends laterally beyond a portion of the main wall but does not extend beyond a greatest lateral extent of the main wall. An upright portion having a curved outer surface is disposed adjacent the flexible actuator member, wherein the curved outer surface is engageable with an internal surface of a housing to guide the flexible actuator member and prevent inadvertent actuation of the flexible actuator member. The actuator cap further includes a container and a housing, wherein the housing has a housing wall that tapers to a discharge opening wherein the discharge opening has a size larger than a radius of the container. The outer peripheral surface is disposed in interfering relationship with the housing wall when the container and the actuator cap are disposed in the housing.

Flock does not disclose or suggest an actuator cap including an upright portion having a curved outer surface that is disposed adjacent a flexible actuator member, wherein the curved outer surface is engageable with an internal surface of a housing to guide the flexible actuator member and prevent inadvertent actuation of the flexible actuator member, as recited by claims 19-26, 28, 29, 43-46, 48-50 and 51-53 of the present application.

In fact, Flock discloses a fluid dispensing device including an upper housing 13 defined by a pair of opposed sidewalls 14, front and back walls 15,18 a top wall 16, and a bottom wall 17. A laterally extending latch operator 48B extends through a slotted opening 49 in the front wall 15. A reservoir 25 that is adapted to contain a supply of fluid is disposed in an inverted position within a well 22 that is formed in the top wall 16. The reservoir 25 has a threaded neck portion 27 that defines a mouth opening 28. An open grid plate 34 is disposed across the mouth opening 28. A stopper 29 having a threaded skirt 30 at a proximal end thereof is screwed onto the neck portion 27 and an opening 31 is provided at a distal end of the stopper 29. A bracket 35 including a pair of vertically spaced plates 36 and 37 is provided within the housing 13. An opening 36A in the plate 36 is positioned to receive the distal end of the stopper 29.

A spring 33 disposed between a ball valve 32 and the grid plate 34 and within the skirt 30 urges the ball valve 32 to maintain the opening 31 in a closed position (FIG. 3). A receiving container 40 having tubular sidewalls 40A and a bottom wall 40B is disposed within the bracket 35. The bottom wall 40B has a dispensing opening 41 disposed therein. The dispensing opening 41 is aligned with the opening 31 of the stopper 29, an opening 37A in the plate 37, and an opening 17A in the bottom wall 17. A rigid valve actuator 55 including a shaft 56 is loosely supported within the receiving container 40 in an upright

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position by suitable guide supports 57 that are fixed to the walls of the container 40. A plunger 58 is connected to an upper end of the actuator shaft 56 and adapted to engage the ball valve 32 in an operative position. Further, a conical valve member 59 is connected to a bottom end of the valve for controlling the dispensing opening 41 in the bottom of the receiving container 40.

A spring biased sear 45 (FIG. 3) is pivotally mounted about a hinge pin 46 to the plate 36. A first end of a latch member 48 that has a hook portion 48A is connected to the cup and a second end of the latch member 48 is connected to the laterally extending latch operator 48B. In operation, the receiving container 40 is raised from the inoperative position (FIG. 3) to an operative position (FIG. 2) by exerting an upward force on the latch operator 48B until the hook portion 48A latches an upper edge of the sear 45. The upward displacement of the receiving container causes fluid in the reservoir 25 to flow through the opening 31 into the receiving container 40. A heater means 52 disposed within the receiving cup 40 heats the fluid until a bi-metal strip thermostatic element 62 determines that the fluid has been heated to a predetermined temperature, whereupon the expansion of a free end 62B of the thermostatic element 62 pivots the sear 45 in a counter clockwise direction to release the latch hook 48A. The weight of the fluid in the container 40 causes the container 40 to be displaced to the bottom of the bracket 35. A down stop 60 limits the downward travel of the rigid actuator 55 and the valve member 59, thereby allowing the fluid to be dispensed through the openings 41 and 17A.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Schering Corp. v. Geneva Pharms., Inc.* 339 F.3d 1373, 1379 (Fed. Cir. 2003). Because Flock does not show an actuator cap having a flexible actuator member, as set forth in the claims at issue, it follows that such claims are not anticipated by Flock.

Further, to support a *prima facie* case of obviousness, an examiner must establish a finding that the prior art included each element claimed, although not necessarily in a single prior art reference" Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of Supreme Court Decision in *KSR International Co. v. Teleflex Inc.* 72 Fed. Reg. 57,526 (Oct. 10, 2007). Flock does not render the subject matter of the claims at issue obvious because of the lack of the above-noted element.

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Reconsideration and allowance of the foregoing claims are respectfully requested. The examiner is encouraged to call the undersigned attorney to discuss the pending claims for the purpose of expediting this prosecution.

Deposit Account Authorization

The Commissioner is hereby authorized to charge any deficiency in any amount enclosed or any additional fees which may be required during the pendency of this application under 37 CFR 1.16 or 1.17, except issue fees, to Deposit Account No. 50-1903.

Respectfully submitted,

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